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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,358	03/03/2004	Charles L. Branch	MSDI-90/PC689.02	4260
52196                      7590                      12/07/2007 KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709				
EXAMINER				
PHILOGENE, PEDRO				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
12/07/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No. **11**

Applicant(s)

10/792,358

BRANCH ET AL.

Examiner

Art Unit

Pedro Philogene

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-27, 23-35, 40-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgin (4,263,899).

With respect to claims 26, 43, Burgin discloses a retractor assembly (10) comprising a first portion (62) having a proximal end and a distal end and being positionable in an incision; a second retractor portion (62) having a proximal end and a distal end and being positionable in the incision opposite the first retractor portion, the first and second retractor portions defining a first axis extending therebetween; and a separation instrument (12) coupled between the proximal ends of the first and second retractor portions and extending away from the proximal ends to one side of the first axis, the separation instrument being operable to move the first and second retractor portions away from one another along the first axis the separation instrument including a first engagement arm (56) extending from the proximal end of the first retractor portion along a second axis transverse to the first axis and a second engagement arm (56) extending from the proximal end of the second retractor portion along a third axis transverse to the first axis, wherein the engagement arms each includes a portion adjacent the respective retractor portion that is rotatable about the respective axis thereof to pivot the respective retractor portion engaged thereto about its proximal end;

as set forth in column 5, lines 1-68, column 6, lines 1-68; and a lever arm (50) extending from the rotatable portion operable to rotate the rotatable portion and pivot the respective retractor portion engaged thereto about its proximal end; asset forth in column 5, lines 1-68.

With respect to claims 27, 23-35, 40-42, 44-47; Burgin discloses all the limitations; as set forth in columns 5-9, lines 1-68, and as best seen in FIGS.1-15.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 21, 23-25, 28, 36-39, 48-51 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Burgin (4,263,899) in view of Bester et al (6,196,969).

It is noted that Burgin discloses all the limitations, except for an intermediate retractor assembly, and a lever arm locking assembly including pawl; as claimed by applicant. However, in a similar art, Bester et al evidence the use of an intermediate retractor assembly and a lever arm locking assembly including a pawl to increase the incision and provide a one-way ratchet clamp.

Therefore, given the teaching of Bester et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Burgin; as taught by Bester et al to increase the size of the incision and to provide a one-way ratchet clamp.

Claim 22 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Burgin (4,263,899) in view of Bester et al (6,196,969) in view of Healy (4,380,999).

It is noted that the above combination of references did not teach of a linking arm including a hook portion; as claimed by applicant. However, in a similar art, Healy evidences the use of retractor having a linking arm including a hook portion for engaging or hooking a separation instrument.

Therefore, given the teaching of Healy, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Burgin/Bester et al, as taught by Healy to engage or hook a separation instrument.

Claims 18, 19, 20, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgin (4,263,899) in view of Bester et al. (6,196,969) in view of Koros et al. (6,139,493)

It is noted that the above combination of references did not teach of intermediate third and fourth retractor portions, and linking arms having offset portion; as claimed by applicant. However, in a similar art, Koros et al evidences the use of a third and fourth retractor portions and linking arms having offset portions to provide a clearer or greater view of the operating site.

Therefore, given the teaching of Koros, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Burgin /Bester et al, as taught by Koros et al to provide a clearer or greater view of the operating site.

***Response to Amendment***

Applicant's arguments, see Remarks, filed 9/21/07, with respect to the rejection(s) of claim(s) 1-51 under 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Burgin/Bester et al. Furthermore, the examiner apologizes for indicating allowable subject matter in the last Office Action.

***Conclusion***

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

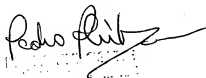
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
December 4, 2007

A handwritten signature in black ink, appearing to read "Pedro Philogene", with a long horizontal flourish extending to the right. The signature is written over a faint, rectangular grid or stamp.